

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

KIMOTHY ROSS,	)	
	)	
Petitioner,	)	
vs.	)	2:06-cv-006-RLY-WGH
	)	
MARK A. BEZY, Warden,	)	
	)	
Respondent.	)	

**Entry Discussing Petition for Writ of Habeas Corpus**

A federal court may issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241(c)(3) only if it finds the applicant “is in custody in violation of the Constitution or laws or treaties of the United States.” *Id.* In this case, petitioner Kimothy Ross has failed to make such a showing. Accordingly, his petition for a writ of habeas corpus must be **denied**. This conclusion rests on the following facts and circumstances:

1. Ross is confined within this District serving the executed portion of a sentence imposed by the United States District Court for the Eastern District of Michigan. In the present action, Ross claims that his sentence has been fully served and that he is entitled to be released from custody.

2. The Amended Judgment issued by the sentencing court on July 15, 1988, refutes the factual basis of Ross’ petition. Specifically, that Amended Judgment issued on July 15, 1988, shows that the contingent sentence of 240 months was deleted from the sentence and the original sentence of 360 months is the only executed term which was imposed and which is in effect. The deletion of the 240 month contingent sentence came about as a result of a hearing conducted by the trial court on July 14, 1988.


3. Ross shifts gears somewhat in reply and asserts that the order of July 14, 1988, with the Amended Judgment of July 15, 1988, are invalid. This shift,

however, takes him out of the arena of § 2241(c)(3), which can be used to challenge the execution of a sentence, *Atehurta v. Kindt*, 951 F.2d 126, 129 (7th Cir. 1991), and into the realm of 28 U.S.C. § 2255, which he could use to challenge the validity of the Amended Judgment. *Valona v. United States*, 138 F.3d 693 (7th Cir. 1998). There are no circumstances which would support the use of § 2241 as a means of challenging the validity of the Amended Judgment issued on July 15, 1988.

Judgment dismissing the petition of Kimothy Ross for a writ of habeas corpus shall now issue. Nothing in this disposition, however, shall prevent Ross from utilizing any remedy available to him pursuant to 28 U.S.C. § 2255.

**IT IS SO ORDERED.**

Date: 03/23/2006

  
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RICHARD L. YOUNG, JUDGE  
United States District Court  
Southern District of Indiana